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Agenda item 113 (d)

Reform of the internal system of justice in the United Nations Secretariat

Note by the Secretary-General

Addendum

1. The Secretary-General has the honour to transmit to the General Assembly the comments made by the United Nations Administrative Tribunal on his report dated 18 March 1995 entitled "Reform of the internal system of justice in the United Nations Secretariat" (A/C.5/49/60).

2. The Secretary-General is grateful to the Tribunal for its comments and suggestions, which are set out in full in the annex to the present note. All the suggestions on the legal aspects of the reform contained in paragraph 17 of the Tribunal's comments have been accepted. The draft statute of the Arbitration Board will be amended accordingly for consideration by the General Assembly at its fiftieth session.

3. As to the rationale of the reform, the Secretary-General wishes to state that the proposal now before the General Assembly was elaborated after a careful assessment of the current system, including its day-to-day operation, which revealed serious flaws and difficulties not always reflected on the record. The general dissatisfaction with the current system led to repeated requests from the General Assembly, the staff, and many administrators for a fair, just and transparent system. The Secretary-General decided that substantial changes were needed in the current system and so informed the General Assembly in a preliminary report (A/C.5/49/13). The proposal set out in the report of 18 March 1995 (A/C.5/49/60), as revised by the present addendum, covers the specific institutional, legal and procedural changes required by the reform.

4. The staff fully support the reform. They have noted with appreciation the Tribunal's support for the Ombudsman panels, the increased conciliation efforts and the addition of a Legal Officer to the Panel of Counsel. However, they do

not share the Tribunal's view that the present Joint Appeals Board (JAB) system should continue and that the full implementation of the reform should be postponed.

5. The proposed reform was elaborated in close consultation with the Legal Counsel, and in the light of the constitutional framework set out in the Charter. Great care was taken to preserve fully the authority of the Secretary-General as chief administrative officer of the Organization. As a result, the arbitrators serving on the Board will be United Nations "officials", not "staff members", as staff members could not make decisions binding on the Secretary-General. Binding arbitration will occur only, at this stage, when the Secretary-General has agreed to submit a case for decision by the Arbitration Board, in the exercise of his discretion. Should mandatory arbitration be introduced in the future for certain categories of cases, those categories would be carefully defined to ensure the respect of the authority of the Secretary-General, as would be the case, for instance, when the disputed issues are purely factual.

6. The Secretary-General emphasizes that his proposal is an integral part of the major changes now taking place in the Organization. Early resolution of employment disputes is essential to the new management culture. The more exacting demands resulting from streamlining and staff shortages resulting from mission detail mean that staff members are no longer able to volunteer their time to the extent required for an efficient disposition of the cases. At the same time, in an era of accountability, programme managers are reluctant to release their staff for duties which are official but not directly related to programme delivery. Professionalization of the internal system of justice, in which knowledgeable practitioners will consider cases in a fair and expeditious manner, will ensure a greater efficiency of the system.

ANNEX

Comments of the United Nations Administrative Tribunal on the report of the Secretary-General dated 18 March 1995 entitled "Reform of the internal system of justice in the United Nations Secretariat"

Before addressing the specifics of the Secretary-General's report, the Tribunal notes that the present proposal for optional arbitration to replace Joint Appeals Boards, as well as the future possibility of mandatory arbitration, would constitute major and fundamental changes in the internal system of justice of the Organization. Even prior to the creation of the Tribunal, Joint Appeals Boards were an integral part of the system. As such, they have played an important role in achieving the delicate equilibrium that exists between the interests involved in the process of administrative justice: on the one hand, those of the staff, and on the other, those linked to the efficiency of the administration of the Organization. The Tribunal considers, therefore, that changes of this magnitude should be examined with the utmost care by all concerned. The potential consequences of hasty action could adversely affect the relationship between the staff and the Organization to the detriment of both.

The Tribunal regrets that the time pressures of the Organization have prevented a more thorough consideration of the Secretary-General's report by the Tribunal at its session in June/July 1995. Although the Tribunal informally considered and submitted brief comments on an earlier different version of a reform proposal, the current proposal was formulated following the Tribunal's last session and its comments were sought quite recently. The following thus does not reflect the interchange among the members of the Tribunal that would otherwise have been possible had the Organization's time schedule permitted, and if the Tribunal had been consulted in a timely manner. Accordingly, the Tribunal wishes to emphasize that its suggestions in the latter portion of the present paper with respect to the specifics of the proposed new statute and changes in the Tribunal's statute are necessarily preliminary in nature. They should be viewed in the context of the Tribunal's doubts as to the need for, or the desirability of, replacing the Joint Appeals Board system with the proposed arbitration system. The Tribunal believes that further careful study of the issues discussed in and the implications of the Secretary-General's report are warranted.

The three major objectives sought to be achieved by the proposals in the Secretary-General's report are improvement of internal procedures so as to reduce significantly the number of cases reaching the stage of formal litigation, expeditious processing of the cases which reach that stage and the capacity to provide a cost-effective and simple justice system. These are worthy objectives, but the Tribunal considers it highly questionable, based on the limited information available at present, whether they are likely to be accomplished by the proposed reforms.

Reasons for delay in the appeals process

1. The Secretary-General's report seems to be based largely on the belief that delays are mainly the result of flaws in the manner in which appeals to Joint Appeals Boards, or JABs, are handled and to the fact that those boards are composed of non-professional volunteer staff members. a/ Although there have been occasional instances of unusual time taken by a JAB to issue its report, the Tribunal considers that the most important cause of delays in the disposal of appeals both before Joint Appeals Boards and the Tribunal has been the numerous extensions of time often sought for filing documents or for answering submissions by the opposing side. There have also been delays at the administrative review stage and in furnishing information needed by the JAB or a party. All of these delays have affected the timing of (a) hearings and (b) determinations by Joint Appeals Boards and by the Tribunal. In consequence, one, two or more years can elapse before a case is ripe for issuance of a report by the Joint Appeals Board or a judgement by the Tribunal.

2. If the Administration officials involved in the steps for processing cases which come before the Joint Appeals Boards and the Tribunal, including those called upon to furnish needed information to the parties, were required to act expeditiously enough to enable both sides to adhere more closely to prescribed time requirements, and they did so, much of the avoidable delays that have beset the system would disappear. Unless internal action is taken by the Administration to improve timeliness by its own officials and staff members, delays are likely to persist whether or not the proposals contained in the Secretary-General's report are adopted. In short, the proposals alone are not likely to ensure speedier decisions since, in the opinion of the Tribunal, delay is not chiefly the result of the manner in which the JABs normally perform their duties.

3. A perspective on delay in the processing of cases at the Tribunal level may be useful in shedding light on what occurs at the JAB level. The time it takes for the Tribunal to judge a case is governed mainly by two factors. First is the number of sessions held by the Tribunal each year, b/ and the number of its members, not all seven of whom can reasonably be expected to be in a position to devote, in advance of the sessions, all the time required for studying files, obtaining additional information, doing legal research or preparing preliminary drafts of judgements. Second, given the amount of professional and administrative effort involved in case-handling details, the small size of the Tribunal's secretariat tends to affect the number and the time required for issuing judgements.

Depending on the nature and complexity of its cases, the Tribunal is ordinarily able to render between 25 and 30 c/ judgements during each session. The measure of any delay at the Tribunal level is, of course, the lapse of time between submission to the Tribunal of the final pleading in a case and the time when the judgement is rendered. Of the approximately 35 cases scheduled to be considered by the Tribunal at its June/July 1995 session, 17 are cases in which a final submission to the Tribunal was made after the Tribunal's autumn 1994 session and in none of the others was the final submission made earlier than 1994. A similar pattern exists with respect to the cases decided by the

Tribunal in 1994, except for one or two cases first considered in 1993 and carried over to 1994.

The Tribunal does not have data regarding the length of time normally taken by JABs to issue reports after the final pleading in its cases has been submitted to it. Presumably, the Fifth Committee would wish to review such data.

Will the proposed reforms expedite and improve the process?

4. In addition to the scepticism expressed above with regard to the belief that replacement of Joint Appeals Boards by an Arbitration Board will speed up the resolution of disputes, there is another reason to question this. The Arbitration Board proposal in the Secretary-General's report appears to be based on a Joint Appeals Board workload in New York and Geneva of 70 and 20 reports per year, respectively. To deal with this workload, it is proposed to establish a single, three-person Arbitration Board in New York and a similar Board in Geneva on which two members will serve only on a part-time basis. The 70 and 20 report-per-year figures represent the output of the Joint Appeals Boards at the two locations. However, unlike the proposed single Arbitration Board structure, at present multiple Boards composed of different individuals may be processing and considering cases at the same time or during overlapping periods, and this permits a larger number of cases to be processed annually.

In determining the workload of the Joint Appeals Boards which are to be replaced by a single Arbitration Board, the present output of the Joint Appeals Boards is less significant than the annual number of cases filed which must be processed. The Tribunal suggests that the Fifth Committee might wish to consider the latter data. Without knowing the number of incoming cases, it would be very difficult to arrive at a valid judgement on whether a single, three-person Arbitration Board of the sort contemplated would be likely to speed up the resolution of disputes or, on the contrary, cause even greater delay. If the number of incoming cases were enough to make it difficult, if not impossible, for a single Arbitration Board (with the same chairperson in every case who must also devote part of his or her time as the chairperson in Disciplinary Board cases) to process them (even after allowing for frequent use of alternate members), a backlog would develop rather quickly and would grow. Having in mind its own output, the Tribunal considers that an incoming caseload of no greater than 70 a year might present serious processing problems for a single Arbitration Board (with two part-time members), as it would require a rate of completion of more than one case per week. At that rate, each member of the Arbitration Board would have to be able to: (a) study carefully the written submissions of the parties together with all attached documents, which are often voluminous, (b) review the Applicant's personnel file, (c) conduct a hearing, (d) consider and discuss the case and (e) prepare a report and recommendations, or a decision.

5. The Secretary-General's report indicates that "professionalizing" the appeals process before cases reach the level of the Tribunal will, in itself, improve the process. This is apparently based on the view that the recommendations or decisions of individuals experienced in the adjudication of employer-employee disputes will necessarily reflect better analysis, be better

informed and thus be more reasonable and more convincing than reports by JABs. This may or may not be the case. Although it is true that disputes presented to JABs are similar to those routinely considered by professional arbitrators in the broad sense that they fall within the category of employer-employee disputes, there is a meaningful difference. It stems from the fact that staff members of the United Nations and the common system are governed by comprehensive rules and regulations, as well as General Assembly resolutions, and principles applicable to international civil servants which are quite dissimilar from the typical labour-union collective-bargaining agreement provisions which professional arbitrators are usually called upon to interpret and apply. The JAB system, because it ordinarily utilizes individuals experienced and knowledgeable regarding the unique features of United Nations staff relationships, thus starts with an important advantage in dealing with issues presented to it and in formulating recommendations. This is of considerable value, not only from the standpoint of staff confidence and informed advice to the Secretary-General, but also owing to the insights and assistance available to the Tribunal from JAB reports.

The previous experience of outside arbitrators may possibly be of some benefit, but it must be recognized that this will be offset to some degree and for some period by the disadvantage of unfamiliarity with the system.

It should also be noted that the proposal to consolidate the work of the JABs in New York, Geneva, Vienna and Nairobi into two Arbitration Boards raises a question of possible excessive centralization, particularly as it would affect staff in distant locations. The latter may, because of their remoteness, find it more difficult to present their cases to New York or Geneva than, for example, to Nairobi. They may also be impeded by the difference between local JAB members and members of an Arbitration Board in New York or Geneva, who may be less knowledgeable about the region and the circumstances.

Cost implications

6. The Tribunal believes that the annual incoming JAB caseload is greater than 70. In this circumstance, the concept of a single Arbitration Board with two members serving on a part-time basis may prove to be quite unrealistic. The obvious solution would then be to provide more full-time, or a larger combination of full-time and part-time, arbitrators. This could increase the cost substantially since the customary fees expected by outside arbitrators, who have the professional qualifications called for by the Secretary-General's report, are likely to be much higher than the cost of utilizing staff members (who may not be otherwise heavily burdened with other work). In the United States of America, for example, it is not uncommon for experienced professional arbitrators to charge fees on the order of $150 to $200 per hour, or $1,500 a day plus expenses. Professional arbitrators are, moreover, accustomed to having reporters available to transcribe testimony at hearings. To these expenses, the travel, daily allowances and interpretation/translation costs of arbitrators from abroad would have to be added if, as is to be expected, selections are made on the basis of equitable geographical distribution.

The Secretary-General's report indicates that the financial implications of the Arbitration Board proposal will be analysed in a subsequent report.

Presumably, this will include the cost of additional staff likely to be required. The report should perhaps also consider whether the Arbitration Board structure might have a consequence which, at present, is probably unintended. In changed circumstances, future Tribunal members may have difficulty understanding why they should continue to serve on what is essentially a pro bono basis while members of the body from which they receive appeals would be entitled to market-oriented remuneration.

Will the proposed reforms decrease litigation?

7. The proposed ombudsman structure referred to in the Secretary-General's report appears to be a constructive measure. d/ Coupled with the suggested emphasis on conciliation efforts, it has the potential for decreasing litigation if it functions as anticipated. However, there must necessarily be doubt about this pending actual experience. Apart from this, the Tribunal questions whether the substitution of outside arbitrators for Joint Appeals Boards will significantly decrease the number of appeals to the Tribunal. The Secretary-General's report assumes that this will occur on the theory that Arbitration Board recommendations or decisions will be more convincing. In the case of Arbitration Board awards, the report assumes that a reduction in appeals will occur because of narrower grounds for appeal.

8. The "convincing" effect of Arbitration Board recommendations or awards is open to as much, if not more, uncertainty than the ombudsman potential for reducing litigation. Staff members who are dissatisfied with the outcome of an appeal in which the Secretary-General has prevailed before the Arbitration Board are apt to be no less likely to hope for a different outcome before the Tribunal than they are at present. Human nature being what it is, the emotional investment of staff members in their own cases more often than not seems to them to be sufficient justification for leaving no stone unturned. The experience of the Committee on Applications for Review of Administrative Tribunal Judgements, under article 11 of the Tribunal's statute, would seem to bear this out. The Tribunal does not see why an Arbitration Board would bring about great change in this sentiment. Nor would it necessarily dissuade the Secretary-General from appealing against awards, and, naturally, the introduction of a right to appeal by the Secretary-General may add to the Tribunal's caseload. In addition, since legal costs for appeals by staff members to the Tribunal are not necessarily borne by them, no greater impediment would exist on this score than at present. This would be equally true whether the Arbitration Board were making a recommendation or issuing an award.

9. The Tribunal also questions whether staff members would have much, if any, incentive to opt for the "award" procedure because of the absence of a member selected by the staff on the Arbitration Board, and concern about the narrowness of their right of appeal to the Tribunal, as compared with the present JAB system. This could be seen by them as a meaningful diminution of their existing rights and might also be regarded as unfairly tilting the scales in favour of the Administration, despite the fact that the narrower right of appeal is applicable to the Secretary-General as well. It is difficult to see why a theoretical possibility of a speedier decision would be viewed as offsetting perceived disadvantages of this nature.

10. But even if the "award" procedure were enthusiastically embraced regardless of these concerns, the number of appeals to the Tribunal would probably not be greatly reduced. Dissatisfied staff members or the Secretary-General would, in attempting to overturn an unfavourable award, very likely be able to devise plausible (though not necessarily meritorious) assertions of errors of fact, procedure or law as justification for appeal. It would then be for the Tribunal to do essentially what it does under the current system, namely, consider all the pertinent materials and decide. In the end, if the Tribunal found that grounds for appeal were lacking, it might be able to dispose of cases without spending as much time on judgements as it does under the current system. At best, that might lessen its workload to some extent. However, this is unlikely to amount to a major reduction in the workload of the Tribunal. Its disposition of appeals will still have to be explained.

11. Although the Tribunal does not have statistics showing the annual number of incoming appeals to the JABs, it does have statistics with respect to the Tribunal. They show that, while the number of applications from staff of all the agencies now under the Tribunal's jurisdiction has generally been increasing over the years, there has been a steady decline in the applications from United Nations staff during the last four years. The statistics also show that the number of appeals per 10,000 staff members of the total who are within the Tribunal's jurisdiction appears to be quite modest. The Tribunal's numerical experience alone thus does not appear to disclose widespread employee dissatisfaction within the Organization or a crisis in the administration of justice. This emphasizes the importance of obtaining data with respect to JABs. Without informative JAB statistical data, it is difficult for the Tribunal to assess the implication in the Secretary-General's report that, owing to the JAB structure, the Secretariat lacks "a fair and efficient internal justice system". Whether such data together with data relating to delays would or would not suggest a need for eliminating the JAB is, of course, the question. While improvement should always be welcome, the real issue is whether immediate radical surgery is essential, or whether something less may be sufficient to accomplish the desired results.

A phased approach to reform

12. The Tribunal recommends that consideration be given to a step-by-step process for dealing with proposed improvements in the system of justice within the United Nations, rather than immediate implementation of a multifaceted proposal before there is an opportunity to assess the effectiveness of less extreme and less costly measures, or the manner in which each might affect others. For example, the proposals contained in the Secretary-General's report appear to anticipate that the creation of ombudsman panels will significantly reduce the number of disputes. If this should prove to be the case, the proposal for replacing JABs with a single, three-person Arbitration Board could prove to be unnecessary. Or, if an Arbitration Board were, for some reason, still thought to be desirable, its proposed structure could then be examined on a more fully informed basis. On the other hand, if the ombudsman panels do not cause a significant reduction in the number of disputes, or, even worse, if it should increase significantly, the creation of a single Arbitration Board replacing multiple JABs would probably aggravate current delay problems. The consequence would be either unplanned-for enlargement of the Arbitration Board

with related cost implications, or abandonment of the proposal and a return to the Joint Appeals Board system or some other. In terms of personnel policy, this shifting back and forth from one system to another might not be seen as a welcome development.

13. If an ombudsman structure were instituted on an experimental basis for a year or two with retention of the current Joint Appeals Board system, measures along the lines mentioned in paragraph 2 above could be instituted to accelerate the JAB processing of cases. Consideration might also be given to increasing the number of JABs or increasing the size of the pool from which JAB members are drawn and arranging for a rotation system that would avoid requiring undue time to be devoted by individual members. Other steps could also be taken during that period to strengthen the JAB system. For example, a possible approach, recently suggested within the Organization, would call for changing the Staff Rules so that the Secretary-General would, if he decided to reject any unanimous recommendation of the Joint Appeals Board, set forth in his decision a fully reasoned opinion why the Joint Appeals Board recommendation could not be accepted. This might possibly discourage some appeals, although, absent empirical data, the point remains uncertain. It has also been suggested that the Joint Appeals Board could be empowered to order the parties to make a good-faith attempt to settle. a/ Such a measure could be coordinated with ombudsman panels serving as the catalyst in settlement discussions.

14. If these measures do not sufficiently improve the system, further steps could be considered at the end of the experimental period, such as professionalizing the Joint Appeals Board. Thus, while the ombudsman panels were being evaluated, the Joint Appeals Board could function as it does now. Depending upon what is learned, the JAB might be retained or modified in a manner that would be far less costly than immediate implementation of an Arbitration Board composed entirely of outsiders. A phased approach would enable a more informed judgement as to whether there was a need for any other structure, and, if so, what its contours should be.

15. Paragraph 17 of the Secretary-General's report contemplates the possibility in 1998 of a further change in the Arbitration Board statute, substituting mandatory binding arbitration for the currently proposed system of optional arbitration. Although there is no indication whether non-appealable arbitration awards are envisioned, such awards would seem to raise questions under Article 97 of the Charter which provides that the Secretary-General shall be chief administrative officer of the Organization. The Tribunal notes, also, that arbitration has traditionally been viewed as requiring bilateral agreement between the parties to a dispute, coupled with the possibility of appeal. Arbitration per se is not a complete substitute for the judicial process and has not been so regarded in any legal system. From the standpoint of preserving balance between the interests of the staff and those of the Administration, it must be recognized that a vast difference exists in a staff right to choose arbitration as against the staff being forced to accept arbitration as the sole means of dispute resolution. Because the hypothetical possibility mentioned in the Secretary-General's report raises highly sensitive and serious issues, the staff would doubtless seek extensive consultations if it were proposed. The Tribunal assumes that its comments would also be invited.

The Sixth Committee

16. The formulation of the statute of the United Nations Arbitration Board, as well as the proposed accompanying amendments to the Tribunal's statute, is related to the proposal which has been under consideration by the Sixth Committee regarding an ombudsman structure and amendment or repeal of article 11 of the Tribunal's statute. In view of this, and because the arbitration statute and the proposed amendments to the Tribunal's Statute entail legal implications, not all of which may be readily apparent, it would seem desirable for consideration to be given to soliciting the views of the Sixth Committee with respect to the Secretary-General's report, if this is not already contemplated. Doing so might aid in averting future, but currently unforeseen, legal problems.

Comments regarding the proposed arbitration statute and changes in the statute of the United Nations Administrative Tribunal

17. The Tribunal has indicated above what appear to it to be flaws in the proposed substitution of an arbitration system for Joint Appeals Boards. It has also pointed out the advisability of (a) more thorough consideration of other possibilities for improving the internal system of justice of the United Nations before making major changes, and (b) a phased approach. Although in view of the foregoing the Tribunal is unable to endorse the proposed arbitration system or to favour adoption of the proposed statute, it has noted the following specific points:

(a) The proposed statute does not adequately address the subject of fact-finding. Because of the short duration of its sessions, the Tribunal is unable to hold hearings frequently. Nevertheless while it is faced at times with cases in which material issues of fact are sharply disputed, the Joint Appeals Board report has not fully resolved the disputed issues through findings explained by the evidence. An Arbitration Board should be directed by the terms of its statute or by a staff rule to include in its recommendations or decision findings on all material disputed issues of fact explaining the evidence on which the Board relied. The same direction could, of course, be given to JABs by the Secretary-General without creating an Arbitration Board structure;

(b) The statute does not make clear that the Board is bound, not only by the Tribunal's jurisprudence, but by staff regulations, staff rules, administrative instructions, etc., and that the Board's authority is limited to deciding the interpretation or application of the staff member's contract of employment or terms of appointment. Although this would seem to be implicit in article 2 of the statute, emphasizing the point is important, as professional arbitrators, especially if they serve on an ad hoc basis, in dealing with unfamiliar and, at times, complex matters arising under the Charter, General Assembly resolutions, staff rules, administrative instructions or principles applicable to the international civil service, may tend to stray from the limits of their authority in order to achieve what they consider to be the best outcome, notwithstanding the possibility of far-reaching consequences. The authority of the Board to render a particular award may thus become a contention in an appeal;

(c) Article 2, paragraph 6, of the statute does not permit appeals on both fact and errors of law, but merely on errors of law, when the Arbitration Board's competence is challenged. This could be of importance when, for example, an issue concerning competence or receivability revolves around what the relevant facts are with respect to the issue of timeliness;

(d) In view of the undesirability, noted above, of having a deciding body involved in or made aware of the content of settlement discussions, an appropriate provision should be embodied in any ombudsman or conciliation procedure;

(e) Article 3, paragraph 6, and the corresponding amendment to the Tribunal's statute are unclear with regard to the scope of review by the Tribunal of action by the Secretary-General dismissing a member of the Arbitration Board for misconduct. As it now stands, the criteria for reviewing such a decision by the Secretary-General are unspecified, i.e., the same or a different standard than the Tribunal applies in reviewing dismissal of staff members where the Tribunal reviews such action on limited grounds. The scope of the remedy also needs elaboration, i.e., reinstatement with compensation, or reinstatement with the Secretary-General having the alternative of compensation in lieu thereof;

(f) Under the statute, the New York and Geneva Boards are apparently not bound to follow their own precedents or that of the other Board. Presumably, they can reach different results on the same issue subject to eventual resolution of conflicting decisions by the Tribunal. In the meantime, this could lead to an unjust result. In that situation, it might be desirable, where possible, for the cases to be consolidated and decided by one Board rather than by both.

18. The Tribunal wishes to express its appreciation to the General Assembly for the opportunity to present its views and trusts that when further consideration is given to proposed changes in the internal system of justice of the United Nations, it will again be invited to do so.

ADDITIONAL COMMENTS OF MR. JUSTICE FRANCIS SPAIN

As an ex-officio member of the High Court and President of the Circuit Court of Ireland, I was requested by my Government to chair a committee to examine the structure and administration of the Circuit Court for the entire country with a view to making recommendations for the more efficient and speedy working of the Court.

In the course of its work, the Committee received evidence, reports and submissions from numerous sources.

The Committee established a Working Group of experts which reported to the full Committee. Its report included data and statistics dealing with such matters as the growth of cases over a period of years and the shifts and increase of population. By examining such factors and the other materials, the

Committee was able to reach informed conclusions regarding judicial structure, procedures and Court locations.

As well as taking into account the findings of the Working Group, the Committee had the benefit of detailed submissions from interested persons and groups knowledgeable about the judicial system and its problems. These submissions came from: (a) members of the judiciary, (b) Registrars, who are the administrators of the Courts, (c) the Incorporated Law Society of Ireland, (d) the Bar Council of Ireland and (e) individual lawyers. With the benefit of its studies and these submissions, the Committee made its recommendations with regard to various pertinent matters, including the problem of delay.

Having spent two years heading the Committee, combined with my knowledge of the internal justice system of the United Nations, gained from membership of the Tribunal, I believe that consideration should be given to bringing about greater efficiency through changes in the current system.

I also believe that a helpful analogy can be drawn between the means by which the Irish Committee carried out its work and the approach which should perhaps be considered for the matters now under review in the Secretary-General's report. The Irish Committee sat for two years dealing with the problems of a court system in a small country. It can scarcely be denied that, when transferred to an international context, a reasonable time is essential to study all the complexities involved against a background of expert evidence and submissions, taking into account all relevant information and statistics. The improvements derived might thereby be effected without the abolition of such a fundamental part of a tried and trusted legal system built up over almost 50 years.

Francis SPAIN
18 May 1995

Notes

a/ The Tribunal notes that since cases dealing with job classification, claims before the Advisory Board on Compensation Claims (ABCC), and Performance Evaluation Reports apparently would not be submitted to the proposed Arbitration Board, and two of the three-member proposed Disciplinary Board would continue to be non-professional volunteers, those cases are evidently not viewed in exactly the same manner. Different policy considerations doubtless account for this, but they are not fully explained in the report.

b/ Owing in part to cost considerations, two sessions a year are held by the Tribunal, each lasting for five weeks. In 1991, when the Tribunal had been meeting in four-week sessions, a third session for three weeks was held to reduce a growing backlog which had developed, though no additional honorariums were paid for the third session.

c/ At times, a single judgement encompasses multiple cases.

d/ The same can be said of the proposed appointment of a Legal Officer to the Panel of Counsel.

e/ The Tribunal considers it inadvisable for a body having judicial or quasi-judicial functions, such as a Joint Appeals Board or an Arbitration Board, to do more than order settlement efforts. It should not become directly involved in settlement discussions. Indeed, such a body should not even be made aware of the specifics of settlement proposals. The same is true of the Tribunal itself (see Judgement No. 686, Rebizov, para. IV (1994)). Otherwise, the parties to the dispute may be tempted to try to influence the deciding body against the other side by shaping settlement proposals in such a way as to portray the opposite side in a poor light, rather than attempt in good faith to seek settlement. For similar reasons, reports and recommendations of ombudsman panels should not be introduced in proceedings before deciding bodies because the function of the ombudsman is primarily directed towards bringing about settlement. Placing such reports and recommendations before a deciding body simply transmits the substance of the settlement process to the deciding body.